1. S.B. Civil Misc. Appeal No.544/2006
   Babu Chand vs. Addl. Collector, Jodhpur and anr.

2. S.B. Civil Misc. Appeal No.545/2006
   Mohan Lal vs. Addl. Collector, Jodhpur and anr.

3. S.B. Civil Misc. Appeal No.546/2006
   Mota Ram & Anr. vs. Addl. Collector, Jodhpur & Anr

Date : 1.12.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Srimali a/w Mr.Rajesh, for the appellants.
Mr. BC Mehta, for respondents.

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Heard learned counsel for the parties.

The appellants by preferring these three appeals have challenged three orders dated 9.3.2004 by which the learned Additional District Judge No.1, Jodhpur rejected the objections of the appellants in these three appeals against the award passed by the learned Divisional Commissioner, Jodhpur dated 4.9.1995. While rejecting the objections raised by the appellants, the learned Additional District Judge No.1, Jodhpur also awarded interest at the rate of 12% p.a. over the cost of tube well determined by the learned Arbitrator. The

appellants being aggrieved against the award dated 4.9.1995 and order dated 9.3.2004 have preferred these three appeals.

Since the questions involved in these three appeals are common, therefore, the same are decided by this common judgment.

Brief facts of the case are that the Government floated a scheme for digging tube well for which some benefits were given by the Government and to avail those benefits, the appellants and other persons applied to the Government by submitting application on 20.10.1986. In pursuance of the said application, an agreement was executed between the respondents and appellants on the same day i.e. On 20.10.1986. In the agreement dated 20.10.1986, it is provided that the cost of the tube well will be determined by the Government and shall be paid by the appellants in terms of the agreement. It is also provided in the agreement that the applicant shall pay 2% of the estimated cost as security amount. It is admitted case of both the parties that the initial cost of the tube well was determined as Rs.230/- per meter and from 20.12.1986, it has been revised to Rs.435/- per meter. A dispute arose between the parties in relation to the interpretation of the Government order dated 20.12.1986 by which the rates have been revised from Rs.230/- to

Rs.435/- per metre. It appears that the Government issued orders and one of which is dated 24.4.1987 explaining the fact of revision of rate with effect from 20.12.1986. The Government made it clear that the persons, who have deposited the cost of tube well before 19.12.1986, shall be entitled to have the tube well on payment of cost of tube well at the rate of Rs.230/- per meter and the persons who have not deposited the cost of tube well by 19.12.1986, rate applicable shall be Rs.435/- per meter.

The dispute was referred to the learned Divisional Commissioner, Jodhpur (Arbitrator) as there was arbitration clause. The learned Arbitrator decided total 26 disputes raised by 26 applicants by common order dated 4.9.1995 and held that the applicants including the appellants are liable to pay the costs at the rate of Rs.435/- per meter as none of the applicants including the appellants have deposited the cost of tube well by or before 19.12.1986.

The objections were filed by various applicants including the appellants who were party before the learned Arbitrator. These all objections were dismissed by the learned civil court.

It is admitted case that against the order of rejection of the objections of the applicants other than the appellants, appeals preferred before this Court have been dismissed.

According to learned counsel for the appellants, in all those cases in which the appeals have been dismissed by this Court, the applicants did not deposit the cost of tube well whereas in the present three appeals, the appellants have admittedly deposited 2% amount which according to learned counsel for the appellants, is the cost of tube well or against the total amount of the tube well and, therefore, the appellants' case is entirely different than decided by this Court in other appeals.

It is also submitted that in view of the fact that the appellants have deposited cost of tube well (2% of cost) before 19.12.1986, therefore, the learned Arbitrator as well as the learned civil court have committed serious error of law in holding that the appellants are also liable to pay the costs at the rate of Rs.435/- per meter.

Learned counsel for the appellants also submitted that the interest awarded by the civil court is wrong as well as excessive.

Learned counsel for the respondents vehemently submitted that the appellants deposited the security money under a specific condition of the agreement dated 20.10.1986. That amount cannot be considered as cost of the tube well which is required to be paid by the

appellants on determination of the final cost for which a specific clause no.2 in the agreement dated 20.10.1986 is there, whereas 2% security is required to be deposited as per condition no.6 of the same agreement. It is not in dispute that the Government was competent to increase the cost of the tube well on the ground of escalation of price etc. In view of the above and in view of the order enhancing the rate of tube wells and further made clear by the Government order dated 21.4.1987, neither the learned Arbitrator has committed any error of fact or law nor the learned civil court has committed any error.

I considered the submissions of learned counsel for the parties and perused the record also.

It is not in dispute that the appellants/ applicants submitted their offer on 20.10.1986 and agreement was executed on same day i.e. 20.10.1986 wherein it has been provided that the cost of the tube well shall be determined by the Government which shall be paid by the appellants. It is also agreed term that the Government has power to raise the cost of tube well. Originally, the Government fixed the rate as Rs.230/- per meter and subsequently, it was increased to Rs.435/- per meter on 20.12.1986. It is also clear from the condition mentioned in the agreement that the

applicants were required to deposit 2% of the estimated cost of tube well as security. The security from the date of initial deposit cannot be treated as payment against the cost as that amount remains refundable on certain contingencies and that security amount may merge in the final cost if provided in the agreement. Therefore, in case, the appellants have deposited 2% security amount for getting the benefit under the contract, then that does not mean that, that amount from the date of deposit is a payment of cost of tube well or against the cost of tube well unless and until the work under the contract stands completed and the Government has right to appropriate that amount against the cost in the last installment against the payment of cost of tube well. Therefore, said amount cannot be and rightly has not been treated to be payment against the cost of tube well. Apart from it, the appellants failed to show how the payment of 2% amount of estimated cost as security can be treated to be whole of the amount of cost of tube well whereas in the order, it is provided that the persons who have paid the cost of tube well before 19.12.1986, they shall be entitled to claim benefit of rates under the new fixation of rate for the tube well.

Learned counsel for the appellants has raised objection with respect to the award of interest by the

civil court but award of interest by the civil court is within the jurisdiction of the civil court and looking to the facts of the case, the award of interest at the rate of 12% p.a. cannot be said to be excessive in a matter where for such a long period, the appellants did not pay the cost of tube well which was increased in the year 1986.

In view of the above discussion, I do not find any merit in these three appeals and the same are hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya